

Assembly Bill No. 2302

Passed the Assembly August 31, 2006

Chief Clerk of the Assembly

Passed the Senate August 30, 2006

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2006, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend, repeal, and add Section 755 of the Evidence Code, relating to evidence.

LEGISLATIVE COUNSEL'S DIGEST

AB 2302, Committee on Judiciary. Evidence: court interpreters.

Existing law requires that in any action or proceeding pursuant to specified provisions of law, an interpreter be provided by the court for a party who is incapable of understanding or speaking the English language to interpret the proceedings in a language that the party understands and to assist communication between the party and his or her attorney.

This bill, operative on July 1, 2007, would revise the above provision to specify that in any civil action or proceeding, including, but not limited to, any family court proceeding, any small claims court proceeding, any proceeding to determine the mental competency of a person, or any court-ordered or court-provided alternative dispute resolution, including mediation and arbitration, with specified exceptions, in which a party does not proficiently speak or understand the English language, an interpreter is required to be present to interpret the proceedings, as specified. The bill would also require a court to provide the interpreter, unless a party has notified the court that he or she has made arrangements for a private interpreter.

Existing law requires the fees of interpreters to be paid by the litigants in civil cases, as directed by the court, but further requires the fees of an interpreter to be waived for a party who needs an interpreter and appears in forma pauperis.

This bill, operative on July 1, 2007, would revise that provision to specify that the fees of interpreters shall be paid by the court. The bill would authorize the court, if a party whose fees have been waived prevails in the action, to assess the amount of waived fees against that party in a manner the court believes is compatible with the party's financial ability, or assess those fees to another party, as specified. The bill would additionally establish the order of precedence in which interpreters would be

assigned in cases if sufficient funds are not allocated in the annual Budget Act or are not otherwise provided to meet the needs for court interpreters in all civil actions and proceedings, or if a sufficient number of interpreters is not available, as specified.

This bill would also require the Judicial Council to conduct a study of the need for court interpreters in civil proceedings and the extent to which the need for interpreters is being met, and to report its findings to the Governor and the Legislature by March 1, 2009, and every 2 years thereafter. The bill would also make related changes to that provision of law and would set forth findings and declarations of the Legislature.

This bill would further require the Judicial Council to adopt training guidelines so that each trial court, in consultation with the exclusive representative of interpreters, ensures that court interpreters receive specified training. The bill would also specify funding for the provision of court interpreter services for the 2007–08 fiscal year.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares as follows:

(a) California is emblematic of the American dream, a place of stunning natural beauty, a seat of international commerce, and a land of unparalleled opportunity. As a result, California is the most populous and demographically diverse state in the nation, a meeting place of cultures, ethnicities, and ideas unlike any other in the world. Of the state's 34 million people, about 26 percent (roughly 8.8 million people) are foreign born. Californians speak more than 220 languages, and 40 percent of the state's population speaks a language other than English in the home. This extraordinary diversity is among the state's greatest assets and has helped make California an international leader in business, the arts, entertainment, engineering, medicine, and other fields. The state's diversity also poses unique challenges for the delivery of government services, particularly for the courts.

(b) For Californians not proficient in English, the prospect of navigating the legal system is daunting, especially for the growing number of parties who do not have access to legal services and therefore have no choice but to represent themselves in court, which is a virtually impossible task for people who are

unable to understand the proceedings. Nearly seven million Californians cannot access the courts without significant language assistance, cannot understand pleadings, forms, or other legal documents, cannot communicate with clerks or court staff and cannot understand or participate meaningfully in court proceedings, much less effectively present their cases without a qualified interpreter. People with limited English proficiency are also often members of groups whose cultural traits or economic circumstances make them more likely to be subjected to legal problems, in part because perpetrators recognize their victims' limited ability to access judicial protection.

(c) The Legislature has previously recognized that the number of non-English speaking persons in California is increasing, and recognized the need to provide equal justice under the law to all California residents and to provide for their special needs in their relations with the judicial and administrative law system. The Legislature has likewise recognized that the effective maintenance of a democratic society depends on the right and ability of its residents to communicate with their government and the right and ability of the government to communicate with them.

(d) Inadequate resources to assist litigants with limited English proficiency affect the court's ability to function properly, causing delays in proceedings for all court users, inappropriate defaults, and faulty interpretation that can ultimately subvert justice. Our judicial system relies on the adversarial process in which neutral arbiters decide disputes based upon competing presentations of facts and law. Conducting court proceedings when one party is incapable of fully participating significantly impairs the quality and efficiency of the process and its results, including compliance with court orders. The courts have made significant efforts to assist litigants with limited English proficiency, including steps to increase the number of certified and registered interpreters and to provide interpreters in civil cases, if resources are available. Nevertheless, court proceedings are required to be conducted in English, and most crucial court forms and documents are available only in English, while the number of skilled interpreters has actually declined over the past decade and the number of persons requiring interpreter services has

increased. As a result, a qualified interpreter is not provided in most civil proceedings.

(e) The inability to respond to the language needs of parties in court impairs trust and confidence in the judicial system and undermines efforts to secure justice for all. The authority of the courts depends on public perceptions of fairness and accessibility. Any significant erosion of public trust and confidence in the fairness of judicial outcomes threatens the future legitimacy of the legal system. By excluding a large segment of the population from participation in an institution that shapes and reflects our values, we threaten the integrity of the judicial process. Resentment fostered by the inability to access the benefits of the court system can ultimately impair enforcement of judicial decrees and attenuate the rule of law.

(f) Reliance on untrained interpreters, such as family members or children, can lead to faulty translations and threaten the court's ability to ensure justice. Court interpretation is extremely difficult and takes a rare combination of skills, experience, and training. Apart from the possibility of fraud, unqualified interpreters often fail to accurately and comprehensively convey questions and distort testimony by omitting or adding information, or by stylistically altering the tone and intent of the speaker, thereby preventing courts from hearing the testimony properly. These problems compromise the factfinding process and can result in genuine injustice.

(g) An overwhelming number of Californians believe that interpreters should be made available to assist non-English speakers in all court proceedings, and that interpreters should be provided free of charge to low-income non-English speakers.

(h) California law currently mandates appointment of an interpreter for all witnesses in civil cases, and for parties with hearing impairments. In addition, California statutes mandate the appointment of an interpreter in adjudicative proceedings before state agencies, boards, and commissions at no charge to the parties whenever a party or the party's witness does not proficiently speak or understand English. Other states by contrast provide both witnesses and parties with a right to a court-appointed interpreter in all civil matters at no cost to the party.

SEC. 2. Section 755 of the Evidence Code is amended to read:

755. (a) In any action or proceeding under Division 10 (commencing with Section 6200) of the Family Code, and in any action or proceeding under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code) or for dissolution or nullity of marriage or legal separation of the parties in which a protective order has been granted or is being sought pursuant to Section 6221 of the Family Code, in which a party does not proficiently speak or understand the English language, and that party is present, an interpreter, as provided in this section, shall be present to interpret the proceedings in a language that the party understands, and to assist communication between the party and his or her attorney. Notwithstanding this requirement, a court may issue an ex parte order pursuant to Sections 2045 and 7710 of, and Article 1 (commencing with Section 6320) of Chapter 2 of Part 4 of Division 10 of the Family Code, without the presence of an interpreter. The interpreter selected shall be certified pursuant to Article 4 (commencing with Section 68560) of Chapter 2 of Title 8 of the Government Code, unless the court in its discretion appoints an interpreter who is not certified.

(b) The fees of interpreters utilized under this section shall be paid as provided in subdivision (b) of Section 68092 of the Government Code. However, the fees of an interpreter shall be waived for a party who needs an interpreter and appears in forma pauperis pursuant to Section 68511.3 of the Government Code. The Judicial Council shall amend subdivision (i) of California Rule of Court 985 and revise its forms accordingly by July 1, 1996.

(c) In any civil action in which an interpreter is required under this section, the court shall not commence proceedings until the appointed interpreter is present and situated near the party and his or her attorney. However, this section shall not prohibit the court from doing any of the following:

(1) Issuing an order when the necessity for the order outweighs the necessity for an interpreter.

(2) Extending the duration of a previously issued temporary order if an interpreter is not readily available.

(3) Issuing a permanent order where a party who requires an interpreter fails to make appropriate arrangements for an interpreter after receiving proper notice of the hearing with information about obtaining an interpreter.

(d) This section does not prohibit the presence of any other person to assist a party.

(e) A local public entity may, and the Judicial Council shall, apply to the appropriate state agency that receives federal funds authorized pursuant to the federal Violence Against Women Act (P.L. 103-322) for these federal funds or for funds from sources other than the state to implement this section. A local public entity and the Judicial Council shall comply with the requirements of this section only to the extent that any of these funds are made available.

(f) The Judicial Council shall draft rules and modify forms necessary to implement this section, including those for the petition for a temporary restraining order and related forms, to inform both parties of their right to an interpreter pursuant to this section.

(g) This section shall remain in effect only until July 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2007, deletes or extends that date.

SEC. 3. Section 755 is added to the Evidence Code, to read:

755. (a) In any civil action or proceeding, including, but not limited to, any family court proceeding, any proceeding to determine the mental competency of a person, or any court-ordered or court-provided alternative dispute resolution, including mediation and arbitration, in which a party does not proficiently speak or understand the English language, and that party is present, an interpreter, as provided in this section, shall be present to interpret the proceedings in a language that the party understands, and to assist communication between the party and his or her attorney. This section does not apply to any arbitration ordered by the court under Title 9 (commencing with Section 1280), Title 9.1 (commencing with Section 1295), Title 9.2 (commencing with Section 1296), Title 9.3 (commencing with Section 1297.11), Title 9.3 (commencing with Section 1298) or Title 9.5 (commencing with Section 1299), of Part 3 of the Code of Civil Procedure. Notwithstanding this requirement, a court may issue an ex parte order pursuant to Sections 2045 and

7710 of, and Article 1 (commencing with Section 6320) of Chapter 2 of Part 4 of Division 10 of, the Family Code, without the presence of an interpreter. Unless a party has notified the court that he or she has made arrangements for a private interpreter, the court shall provide the interpreter. The interpreter shall be certified pursuant to Article 4 (commencing with Section 68560) of Chapter 2 of Title 8 of the Government Code, except as provided in subdivision (c) of Section 68561 of the Government Code.

(b) (1) The fees of interpreters utilized under this section shall be paid by the court.

(2) If a party whose fees have been waived prevails in the action or proceeding or obtains a monetary settlement of his or her claims, the court may assess the amount of the waived fees either against that party in any manner the court believes is compatible with the party's financial ability, or assess those fees to another party against whom the party whose fees and costs have been waived would have been entitled to recover those fees had they not been waived, and order the other party to pay that sum to the court or to the clerk and serving and levying officers respectively or order the amount of the waived fees added to the judgment and so identified by the clerk.

(3) If sufficient funds are not allocated in the annual Budget Act or are not otherwise provided to meet the needs for court interpreters in all civil actions and proceedings, or if after diligent search a sufficient number of interpreters is not available for all civil actions and proceedings, interpreters shall be assigned in the following order of priority, subject to any rules that the Judicial Council may adopt to implement the priority guidelines in this section so as to ensure that court interpreters are provided in civil matters consistently with sound and efficient court administration and prudent personnel practices:

(A) Parties appearing in forma pauperis or whom the court otherwise determines are financially unable to pay the cost of an interpreter in the following order of precedence by case type:

(i) Actions and proceedings under Section 527.6 of the Code of Civil Procedure or under Division 10 (commencing with Section 6200) of the Family Code.

(ii) Actions and proceedings under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the

Family Code) and actions and proceedings under Part 4 (commencing with Section 7800) of Division 12 of the Family Code.

(iii) Actions and proceedings for dissolution or nullity of marriage or legal separation of the parties in which a protective order has been granted or is being sought pursuant to Section 6221 of the Family Code or a protective order has been granted or is being sought pursuant to Section 136.2 or paragraph (2) of subdivision (a) of Section 1203.097 of the Penal Code.

(iv) Actions and proceedings relating to unlawful detainer.

(v) Actions and proceedings under the Elder Abuse and Dependent Adult Civil Protection Act (Chapter 11 (commencing with Section 15600) of Part 3 of Division 9 of the Welfare and Institutions Code).

(vi) Actions and proceedings involving the appointment of a guardian or conservator.

(vii) Actions and proceedings in small claims court, notwithstanding Section 116.550 of the Code of Civil Procedure.

(viii) Actions and proceedings arising out of or related to employment.

(ix) Actions and proceedings with respect to claims alleging violation of civil rights.

(x) Other actions and proceedings in family court.

(xi) Other actions and proceedings in probate court.

(xii) Other limited civil actions and proceedings.

(xiii) Other unlimited civil actions and proceedings.

(B) Parties appearing in propria persona in the following order of precedence by case type:

(i) Actions and proceedings under Section 527.6 of the Code of Civil Procedure or under Division 10 (commencing with Section 6200) of the Family Code.

(ii) Actions and proceedings under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code) and actions and proceedings under Part 4 (commencing with Section 7800) of Division 12 of the Family Code.

(iii) Actions and proceedings for dissolution or nullity of marriage or legal separation of the parties in which a protective order has been granted or is being sought pursuant to Section 6221 of the Family Code or a protective order has been granted

or is being sought pursuant to Section 136.2 or paragraph (2) of subdivision (a) of Section 1203.097 of the Penal Code.

(iv) Actions and proceedings relating to unlawful detainer.

(v) Actions and proceedings under the Elder Abuse and Dependent Adult Civil Protection Act (Chapter 11 (commencing with Section 15600) of Part 3 of Division 9 of the Welfare and Institutions Code).

(vi) Actions and proceedings involving appointment of a guardian or conservator.

(vii) Actions and proceedings arising out of or related to employment.

(viii) Actions and proceedings with respect to claims alleging violation of civil rights.

(ix) Other actions and proceedings in family court.

(x) Other actions and proceedings in probate court.

(xi) Other limited civil actions and proceedings.

(xii) Other unlimited civil actions and proceedings.

(C) Actions and proceedings in small claims court, notwithstanding Section 116.550 of the Code of Civil Procedure.

(D) Other parties in the following order of precedence by case type:

(i) Actions and proceedings under Section 527.6 of the Code of Civil Procedure or under Division 10 (commencing with Section 6200) of the Family Code.

(ii) Actions and proceedings under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code) and actions and proceedings under Part 4 (commencing with Section 7800) of Division 12 of the Family Code.

(iii) Actions and proceedings for dissolution or nullity of marriage or legal separation of the parties in which a protective order has been granted or is being sought pursuant to Section 6221 of the Family Code or a protective order has been granted or is being sought pursuant to Section 136.2 or paragraph (2) of subdivision (a) of Section 1203.097 of the Penal Code.

(iv) Actions and proceedings relating to unlawful detainer.

(v) Actions and proceedings under the Elder Abuse and Dependent Adult Civil Protection Act (Chapter 11 (commencing with Section 15600) of Part 3 of Division 9 of the Welfare and Institutions Code).

(vi) Actions and proceedings involving the appointment of a guardian or conservator.

(vii) Actions and proceedings in small claims court, notwithstanding Section 116.550 of the Code of Civil Procedure.

(viii) Actions and proceedings arising out of or related to employment.

(ix) Actions and proceedings with respect to claims alleging violation of civil rights.

(x) Other actions and proceedings in family court.

(xi) Other actions and proceedings in probate court.

(xii) Other limited civil actions and proceedings.

(xiii) Other unlimited civil actions and proceedings.

(4) This section shall not be construed to negate or limit any right to an interpreter in a civil action or proceeding otherwise provided by state or federal law.

(c) Except as provided in paragraph (3) of subdivision (b) any civil action in which an interpreter is required and provided under this section, the court shall not commence proceedings until the appointed interpreter is present and situated near the party and his or her attorney. However, this section shall not prohibit the court from doing either of the following:

(1) Issuing an order when the necessity for the order outweighs the necessity for an interpreter.

(2) Extending the duration of a previously issued temporary order if an interpreter is not readily available.

(d) This section does not prohibit the presence of any other person to assist a party.

(e) A local public entity may, and the Judicial Council shall, apply to the appropriate state agency that receives federal funds authorized pursuant to the federal Violence Against Women Act (P.L. 103-322) for these federal funds or for funds from sources other than the state to implement this section.

(f) The Judicial Council shall draft rules and modify forms necessary to implement this section, including those for the petition for a temporary restraining order and related forms, to inform both parties of their right to an interpreter pursuant to this section.

(g) This section shall not be construed to alter the right of an individual to an interpreter in criminal, traffic or other infraction, juvenile, or mental competency actions or proceedings.

(h) This section shall become operative on July 1, 2007.

SEC. 4. The Judicial Council shall conduct a study of the need for court interpreters in civil proceedings and the extent to which the need for interpreters is being met pursuant to Section 755 of the Evidence Code, and shall report its findings and recommendations to the Governor and the Legislature on or before March 1, 2009, and every two years thereafter. The study shall include data showing, by court, the languages for which parties in civil matters need a court-provided interpreter according to type of action or proceeding and whether the party appears in *propria persona* or in *forma pauperis*, as well as the extent to which each of these needs is met by court employees or independent contractors, certified or registered interpreters or, if not by a certified or registered interpreter, then the circumstances warranting good cause for appointment of a noncertified interpreter, the amounts expended for each according to court, type of party and type of action or proceeding, and the fees apportioned and collected from parties pursuant to paragraph (2) of subdivision (b) of Section 755 of the Evidence Code. The report shall include findings and recommendations regarding the need for additional interpreters and interpreter compensation, whether the availability of interpreters or the assessment of party fees has an impact on equal access to justice, and the effect of court interpreters on court administration and efficiency, including reduced courtroom time for hearings, increased compliance with orders and court schedules, reduced case delays, and enhanced coordination between courts and culturally relevant services in the community.

SEC. 5. The Judicial Council shall adopt training guidelines so that each trial court, in consultation with the exclusive representative of interpreters, ensures that court interpreters receive any training necessary to comply with the requirements of this act. Training activities may include, but are not limited to, video broadcasts, Internet-based training, and dissemination of written materials.

SEC. 6. New appointments of court interpreters in civil matters pursuant to this act shall not result in a reduction in staffing or compromise the quality of service in criminal, juvenile, or other types of matters in which appointments have been made.

SEC. 7. No more than ten million dollars (\$10,000,000) shall be appropriated in the 2007–08 Budget Act for the provision of court interpreter services in civil matters. The Judicial Council shall develop an implementation plan for providing court interpreters in civil matters that shall not exceed ten million dollars (\$10,000,000) for the 2007–08 fiscal year.

Approved _____, 2006

Governor